

DEPARTMENT OF STATE REVENUE

03-20160395.LOF
04-20160394.LOF

Letter of Findings: 03-20160395; 04-20160394
Withholding Tax
For the Tax Period Ending February 29, 2004
Sales and Use Tax
For the Tax Periods Ending January 31, 2004 and February 29, 2004

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Company was liable for the sales/use tax and withholding tax assessed because it failed to meet its burden of proof demonstrating that the Department's assessments were not correct.

ISSUE

I. Sales/Use Tax & Withholding Tax - Burden of Proof.

Authority: IC § 6-3-4-1 et seq.; IC § 6-2.5-6-1 et seq.; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the assessment of taxes.

STATEMENT OF FACTS

Taxpayer, an Indiana company, was doing business in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer failed to file the statutorily required sales tax returns and withholding tax returns. As a result, the Department issued proposed assessments based on the best information available to the Department ("BIA assessments").

Taxpayer protested three BIA assessments. A phone hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales/Use Tax & Withholding Tax - Burden of Proof.

DISCUSSION

Taxpayer protested the Department's three BIA assessments (Withholding tax, for the tax period ending February 29, 2004 and Sales and Use Tax, for the tax periods ending January 31, 2004 and February 29, 2004).

Pursuant to Indiana law, a taxpayer, who is a retail merchant doing business and employs workers in Indiana, is required to file the required sales tax returns and withholding tax returns before the statutory due dates. IC § 6-2.5-6-1 et seq.; see also IC § 6-3-4-1 et seq. When the taxpayer fails to do so, IC § 6-8.1-5-1(a) permits the Department to make a proposed assessment based on the best information available to the Department. When the Department issues the proposed assessment, the notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.* In other words, as a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. *Id.*; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and

non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Therefore, the issue in this instance is whether Taxpayer demonstrates that the Department's BIA assessments were incorrect.

At the hearing conducted in August 2016, Taxpayer was informed and understood that the BIA assessments stemmed from its failure to file the required tax returns. Taxpayer explained that its officer in charge of filing the returns was ill and thus was unable to do so timely. Taxpayer further asked that the Department allow Taxpayer additional two weeks to work with its accountant to file the necessary returns. The Department granted the request allowing Taxpayer additional time. Nonetheless, by the end of November 2016, ninety (90) days after the two-week time initially requested by Taxpayer, the Department has not received the necessary documentation. Since Taxpayer failed to file the returns, the Department's assessments remain correct and valid.

In short, given the totality of the circumstances, in the absence of the required returns filed by Taxpayer, Taxpayer failed to meet its burden to demonstrate that the Department's assessments were incorrect.

FINDING

Taxpayer's protest is respectfully denied.

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